

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRIVON NUVELL LOCKETT,
Plaintiff,
v.
Y. DELGADO,
Defendant.

Case No. [24-cv-07493-WHO](#) (PR)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

Plaintiff Trivon Nuvell Lockett's 42 U.S.C. § 1983 action is DISMISSED (with leave to amend) because it is clear from the face of the complaint that he has not exhausted his administrative remedies. He states that his "[a]ppeal is being reviewed at the 3rd Level [of] Review." (Compl., Dkt. No. 5 at 1.)

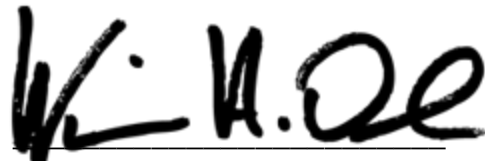
An action must be dismissed unless the prisoner has exhausted available administrative remedies before he filed suit. *See McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002); *see also Vaden v. Summerhill*, 449 F.3d 1047, 1051 (9th Cir. 2006) (where administrative remedies not exhausted before prisoner sends complaint to court, action will be dismissed even if exhaustion is completed by time complaint actually is filed by clerk). But "a prisoner can cure [exhaustion] deficiencies through later filings, regardless of when he filed the original action" because "[e]xhaustion requirements apply based on when a plaintiff files the operative complaint." *Saddozai v. Davis*, 35 F.4th 705, 708 (9th Cir. 2022) (citations and internal quotation marks omitted). Thus, a prisoner who files an original complaint (when he had not exhausted his remedies) and then files an amended complaint (when he had fully exhausted his remedies) satisfies the exhaustion requirement and is not subject to dismissal for lack of exhaustion. *See id.* at 708-10.

1 Accordingly, the complaint is DISMISSED with leave to file an amended complaint
2 on or before **May 1, 2025**. In the amended complaint, Lockett must make it clear whether
3 he has exhausted his administrative remedies. If he has not, he must make that clear.

4 The amended complaint must include the caption and civil case number used in this
5 order (24-07493 WHO (PR)) and the words FIRST AMENDED COMPLAINT must be
6 written on the first page. The amended complaint must also appear on this Court's form, a
7 copy of which will be sent to him. Because an amended complaint completely replaces the
8 previous complaints, plaintiff must include in his first amended complaint all the claims he
9 wishes to present and all of the defendants he wishes to sue. *See Ferdik v. Bonzelet*, 963
10 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the prior
11 complaint by reference. Failure to file a proper amended complaint by May 1, 2025 may
12 result in dismissal of this action under Federal Rule of Civil Procedure 41(b) for failure to
13 prosecute.

14 **IT IS SO ORDERED.**

15 **Dated:** March 26, 2025



16 WILLIAM H. ORRICK
17 United States District Judge
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